



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,745	01/02/2004	Troy Augborne	15293	1850
7590	03/03/2006		EXAMINER	
Roy A. Ekstrand Mattel, Inc MI-1518 333 Continental Blvd El Segundo, CA 90245			FIDEI, DAVID	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/750,745

Applicant(s)

AUGBORNE, TROY

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 4-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. Claims 2 and 7 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 1 was amended to include a mirror supported on the base and therefore includes a mirror supported within the body as recited in claim 2 and a mirror on the platform recited in claim 7.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2 and 8 are under 35 U.S.C. 103(a) as being unpatentable over by Menceles (Patent no. 6,622,867) in view of Gaulkin et al (Patent no. 5,403,223). A display package is disclosed comprising a generally cylindrical body 12 that defines a window aperture by its transparent nature. A base 16 and cap 14 are also disclosed. A plurality of tabs is defined by apertures 44 that extend through slots 20, the tabs bending for removable securement as described in col. 3. lines 52-65. The difference between claim 1 and Menceles resides in the base having a mirror supported thereon.

It would have been obvious to one of ordinary skill in the art to include a mirror in the body of the display package as taught by Gaulkin et al #17, in order to provide a more aesthetically enhanced display. It is also well known to those skilled the art that a reflective surface on the inside of the package permits increased visibility of the article. To include a mirror on the base (claim 1) or positioned opposite the window aperture (claim 8) would have been an obvious matter of design choice.

Claim 2 is not seen as any further limiting than claim 1 and it manifestly satisfied by prior art meeting the independent subject matter.

4. Claims 1, 2 and 8 are under 35 U.S.C. 103(a) as being unpatentable over by Menceles (Patent no. 6,622,867) in view of Gaulkin et al (Patent no. 5,403,223) and Edwards et al (Patent no. 6,454,124). A display package is disclosed comprising a generally cylindrical body 12 that defines a window aperture by its transparent nature. A base 16 and cap 14 are also disclosed. Apertures 44 that extend through slots 20 define a plurality of tabs, the tabs bending for removable securement as described in col. 3, lines 52-65. To the extent that aperture extending through the slots 20 are not considered as defining tabs, Edwards is cited for the disclosure of tabs 41 that extend through slot 48 to join a side panel to an end wall. To employ such a means in the connection of Menceles would have been an obvious use of an equivalent fastening construction. The difference between claim 1 and Menceles resides in the base having a mirror supported thereon.

It would have been obvious to one of ordinary skill in the art to include a mirror in the body of the display package as taught by Gaulkin et al #17, in order to provide a more aesthetically enhanced display. It is also well known to those skilled the art that a reflective surface on the inside of the package permits increased visibility of the article. To include a mirror on the base (claim 1) or positioned opposite the window aperture (claim 8) would have been an obvious matter of design choice.

Claim 2 is not seen as any further limiting than claim 1 and it manifestly satisfied by prior art meeting the independent subject matter.

5. Claims 4, 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Frank (Patent no. 3,303,953) and Blake (Des no. 189,880). The difference between the claimed subject matter and the prior art resides in the cap to resemble a wheel of a tire. Both Frank and Blake disclose that it is known to those skilled in the art to construct containers with ornamental shaped caps. It would have been obvious to one skilled in the art at the time the invention was made to employ a cap shape to

Art Unit: 3728

resemble a tire, or any ornamental shape in order to provide an aesthetically attractive package appearance.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 1 above, and further in view of Wilford (Patent no. 4,185,739). The difference between the claimed subject matter and the prior art resides in the platform including a pair of toy vehicle support posts. Wilford figure 1 discloses that it is known to those skilled in the art to construct display containers with support posts on retainers 1. It would have been obvious to one skilled in the art at the time the invention was made to support posts as suggested by Wilford, in order to retain the vehicle to the support.

Response to Arguments

Applicant's arguments with respect to claims 1, 2, 4-8 have been considered but are moot in view of the new ground(s) of rejection.

This action is NON-FINAL.

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David T. Fidei whose telephone number is (571) 272-4553. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The Official Fax number to file responses to this Office Action is (571) 273-8300.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David T. Fidei
Primary Examiner
Art Unit 3728

Dtf
March 1, 2006